

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JIMMY E. RONE, SR.,

Petitioner,

v.

CASE NO. 03-72739
Honorable Patrick J. Duggan

RAYMOND BOOKER, Warden

Respondent.

**OPINION AND ORDER DENYING PETITIONER'S MOTION FOR
REHEARING OF THE COURT'S ORDER DATED FEBRUARY 23, 2006**

At a session of said Court, held in the U.S. District
Courthouse, Eastern District
of Michigan on March 10, 2006.

PRESENT: HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Petitioner Jimmy E. Rone, Sr. ("Petitioner") filed a *pro se* petition for a writ of habeas corpus on July 17, 2003, pursuant to 28 U.S.C. Section 2254. Respondent subsequently filed a motion for summary judgment seeking dismissal of the petition for failure to comply with the one-year statute of limitations applicable to federal habeas actions. On June 4, 2004, this Court issued an Opinion and Order granting Respondent's motion and dismissing the petition. The Court concluded that the one-year statute of limitations applicable to Petitioner's petition for writ of habeas corpus expired on December 26, 2001, thereby rendering Petitioner's filing untimely. In reaching this

holding, the Court concluded that the statute of limitations was not tolled when Petitioner appealed the state trial court's denial of his motion for relief from judgment because Petitioner's applications to the Michigan Court of Appeals were dismissed for failure to comply with the court rules. Petitioner filed a motion for rehearing and/or reconsideration on June 17, 2004, which this Court denied on June 25, 2004.

On February 10, 2006, Petitioner filed a Motion for Relief from Judgment Pursuant to Federal Rule of Civil Procedure 60(b)(3). In his motion, Petitioner contended that "there has been either a 'fraud on the Court,' a 'misrepresentation of Petitioner claim[s],' and/or a 'grave manifest error'" mandating a reversal of the Court's June 4, 2004 Opinion and Order. This Court denied the motion on February 23, 2006, holding that it was filed beyond the one year time limit for Rule 60(b)(3) motions. On March 6, 2006, Petitioner filed the pending motion for rehearing pursuant to Rule 7.1(g)(3) of the Local Rules for the Eastern District of Michigan.

Rule 7.1(g) provides that a motion for reconsideration only should be granted if the movant demonstrates that the Court and the parties have been misled by a palpable defect and that a different disposition of the case must result from a correction of such a palpable defect. *Id.* A motion that merely presents the same issues already ruled upon by the Court shall not be granted. *Id.* Petitioner's motion only raises issues already addressed by this Court. Moreover, the Court concludes that it did not commit a defect in deciding Petitioner's previous motions.

The United States Supreme Court has held that an application is "properly filed"

for purposes of 28 U.S.C. § 2244(d)(2) when its “delivery and acceptance are in compliance with the applicable laws and rules governing filings. These usually prescribe, for example, the form of the document, the time limits upon its delivery, the court and office in which it must be lodged, and the requisite filing fee.” *Artuz v. Bennett*, 531 U.S. 4, 8-9, 121 S. Ct. 361, 363-64 (2000). The Michigan Court of Appeals dismissed Petitioner’s August 2001 application for leave to appeal for failure to comply with the court rules. *People v. Rone*, Case No. 236280 (Mich. Ct. App. Oct. 11, 2001)(unpublished op.)(Dkt. #24 at 11). The appellate court dismissed his subsequent July 2002 appeal as untimely. *People v. Rone*, Case No. 242453 (Mich. Ct. App. Aug. 13, 2002)(unpublished op.)(Dkt. #26 at 4). As such, the applications were not “properly filed” and did not toll the one year statute of limitations set forth in Section 2244 of the Anti-Terrorism and Effective Death Penalty Act.

Accordingly,

IT IS ORDERED, that Petitioner’s motion for rehearing is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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